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November 12, 2002

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Submission of Vycera Communications, Inc. Concerning
Application by SBC Communications, Inc. Pursuant to Section 271 of the
Telecommunications Act of 1996 To Provide In-Region, InterLATA Services
in California. WC Docket No. 02-306

Dear Secretary Dortch:

On behalf of Vycera Communications, Inc. ("Vycera"), its undersigned attorneys submit as an ex parte filing in this docket a copy of a November 8, 2002 letter from Vycera's attorneys to David Discher of SBC Pacific Bell. The letter demands that SBC Pacific Bell immediately allow Vycera to adopt, pursuant to Section 252(i) of the Telecommunications Act and California Rule 7.3.2(a), all provisions of the Pacific Bell-AT&T interconnection agreement, with the exception of reciprocal compensation provisions that are pending in a California Public Utilities Commission ("CPUC") arbitration initiated by SBC. The letter also demands that SBC Pacific Bell immediately proceed with testing to implement the agreement.

As indicated in the attached letter, copies of the letter were sent to Mr. John P. Stanley, Assistant Chief of the Competition Policy Division of the Commission's Wireline Competition Bureau, and to Ms. Renee Crittendon, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau. As discussed during Vycera's meeting with Commission Staff on November 1, 2002 (summarized in Vycera's ex parte filing on November 4, 2002), SBC Pacific Bell's ongoing refusal to **allow** Vycera to adopt the interconnection agreement as requested by Vycera on September 3, 2002, or at least the provisions of the agreement not related to reciprocal coinpenation, is relevant to the Commission's review of SBC's pending California Section 271 application.

SBC should not be granted 271 authority in light of its practices designed to delay and impede potential competitors' entry into the market, and to cause competitors such as Vycera to expend a great deal of time and expense merely to obtain that to which they are entitled under the Telecommunications Act. Federal rules and the California rules. SRC Pacific Bell's refusal to proceed with testing until the CPUC arbitration proceeding has concluded is yet another delaying tactic to push Vycera's ability to offer new services under the agreement for several more months.

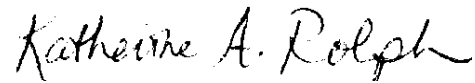
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Please do not hesitate to contact us if you would like additional information regarding these issues.

Very truly yours,

A handwritten signature in black ink that reads "Katherine A. Rolph". The script is cursive and fluid, with the first name being the most prominent.

Patrick J. Donovan
Katherine A. Rolph

Counsel for Vycera Communications, Inc

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November 8, 2002

****Via Facsimile and Overnight Mail ****

David P. Discher
Pacific Bell Telephone Company
140 New Montgomery Street, Room 1517
San Francisco, CA 94105

RE: Vycera Demand that SBC Move Forward With Testing and that SBC Allow it to Immediately Opt Into All Provisions of the Pacific Bell-AT&T Interconnection Agreement, With the Sole Exception of the Reciprocal Compensation Provisions that are Pending CPUC Arbitration Initiated by SBC

Dear David,

We are writing on behalf of Vycera Communications, Inc. ("Vycera") to request that SBC Pacific Bell take action immediately to re-initiate testing with Vycera, and to request that SBC allow Vycera to immediately adopt all provisions of the Pacific Bell-AT&T interconnection agreement as requested by Vycera on September 3, 2002, with the exception of the reciprocal compensation provisions that are pending in the CPUC arbitration initiated by SBC.¹

Vycera and SBC Pacific Bell previously initiated steps to commence preliminary testing required by SBC to implement the new UNE-P services that Vycera plans to provide when SBC allows it to adopt the AT&T interconnection agreement. However, in yet another delaying tactic, SBC's personnel recently advised Vycera that SBC now will not proceed with the implementation testing until the arbitration proceeding is completed. SBC personnel stated that SBC Pacific Bell cannot continue with testing unless Vycera has its "footprint" established in

¹ As you are aware, on September 3, 2002 Vycera filed with the California Public Utilities Commission ("CPUC") its request to adopt the AT&T/Pacific Bell interconnection agreement. Rather than allowing Vycera to adopt the agreement, SBC "offered" Vycera a 21-page reciprocal compensation amendment that included unreasonable and burdensome terms. Vycera did not accept the proffered amendment. On September 18, 2002, SBC filed with the CPUC an application for arbitration based on SBC's position regarding the reciprocal compensation provisions of the agreement. (Vycera believes that SBC has no tenable legal basis even to file an application for arbitration in this case, since clearly technical infeasibility is not an issue, and it would not cost SBC more to provide interconnection to Vycera than to AT&T. These are the only two grounds under the FCC rules and CPUC rules upon which SBC may decline a requesting carrier's adoption request.) The CPUC is not scheduled to issue a decision on SBC's arbitration request until January 9, 2002 (four months after Vycera's opt-in request was filed).

their billing systems, and that Vycera's "footprint" cannot be established in their billing systems because of the outstanding arbitration proceeding.'

As a result of SBC's delay tactics with respect to what should have been a simple opt-in agreement, and its recent abrupt refusal to proceed with testing, Vycera's ability even to conduct SBC-required testing prior to rolling out the new UNE-P services under the agreement would be delayed by at least an additional two months, and its ability to actually roll out the new services would be delayed even further as a result. The delays caused by SBC to date have undermined and thwarted Vycera's ability to compete and have caused and continue to cause extensive harm to Vycera. **Vycera demands that SBC immediately move forward with testing in order to avoid additional delay.** This testing could have, and should have, been completed by now, since Vycera made its original opt in request on September 3, 2002.

In addition to the re-initiation of testing, Vycera also demands that SBC immediately allow it to opt into the AT&T agreement, effective September 18, 2002, with the limited exception of the reciprocal compensation provisions, as required by California Rule 7.3.2(a). As you know, pursuant to California Rule 7.3.2(a), SBC must allow requesting carriers to opt into all portions of interconnection agreements that are not the subject of a pending arbitration.³ The terms of the agreement to which SBC objects are the reciprocal compensation provisions. There is no question that SBC must honor Vycera's request to adopt the remainder of the interconnection agreement while the reciprocal compensation provisions are pending arbitration initiated by SBC.

Vycera has expended a great deal of time and incurred substantial legal expense as a result of SBC's tactics to delay and impede Vycera's ability to opt into the AT&T interconnection agreement, contrary to the requirements Section 252(i), the requirements of Section 271 Checklist Item 1 (Section 271(c)(2)(B)(i)) of the Telecommunications Act, and contrary to the public interest considerations set forth in Section 271(d)(3)(C) of the Telecommunications Act.

³ Vycera notes that in SBC's Section 271 Affidavit of Michael E. Flynn tiled with the Federal Communications Commission ("FCC"), Mr. Flynn stated that, "When Pacific is unable to immediately assign wholesale prices in accordance with an interconnection agreement, the CLEC is provided service, even if billing is delayed until the required system changes have been made. Once system changes are implemented, an adjustment is made per the terms and conditions of the CLEC's interconnection agreement." Vycera submits that the reasoning proffered by SBC personnel regarding the abrupt halting of testing (*i.e.* that testing cannot be done until a billing "footprint" is established) is not consistent with SBC's above policy as stated to the FCC in support of SBC's 271 application. Moreover, Vycera already is established in Vycera's billing systems since Vycera currently resells Pacific Bell local exchange services.

Pursuant to California Rule 7.3.2(a), "Should the ILEC file for arbitration, the ILEC shall immediately honor the adoption of all those terms not subject to objection pursuant to Rule 7.2, effective as of the date of the filing of the arbitration request."


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We will expect SBC to (1) immediately re-initiate implementation testing, and (2) allow Vycera to opt into all of the terms of the AT&T agreement immediately, dating back to October 3, 2002, with the exception of the reciprocal compensation provisions pending CPUC review in the arbitration proceeding initiated by SBC.

Copies of this letter are being sent to Mr. John Stanley, Assistant Chief of the FCC's Wireline Competition Bureau, and to Ms. Renee Crirrendon, Attorney Advisor, Competition Policy Division of the Wireline Competition Bureau, as this matter is relevant to the FCC's review of SBC's pending California Section 271 application.

We look forward to resolving these matters with you as expeditiously as possible. Please do not hesitate to call us if you have any questions.

Sincerely,



Patrick J. Donovan
Rogena G. Harris
Katherine A. Rolph

cc: John P. Stanley
Assistant Chief, Competition Policy Division, FCC Wireline Competition Bureau
Renee Crirrendon
Attorney Advisor, Competition Policy Division, FCC Wireline Competition Bureau
Derek M. Gietzen
President & CEO, Vycera Communications, Inc.